

OGC REVIEW COMPLETED

6 JUN 1980

MEMORANDUM FOR: General Counsel

FROM

[Redacted]

Acting Director of Personnel Policy, Planning,
and Management

SUBJECT : Participation Under the Federal Employee Flexible
and Compressed Work Schedules Act of 1978 (PL 95-390)

1. On 7 May 1980, we sent to [Redacted] of your office, a memorandum (copy attached) requesting confirmation of our interpretation of PL 95-390. Our interpretation would permit Agency components to experiment with certain alternative work schedules which now require a waiver of some of the overtime requirements of the Fair Labor Standards Act (FLSA). Senior Agency (and Intelligence Community) managers have expressed a great deal of interest in using alternative work schedules that would be permissible under the provisions of PL 95-390. STATINTL

2. A rapid reply is essential since a reasonable experimental period (i.e., 10 to 12 months) is required by OPM to effectively evaluate the use of alternative work schedules. If the Agency participates under PL 95-390, an evaluation report must be submitted to the Office of Personnel Management no later than 1 May 1981. Any action you could take to expedite the resolution of the potential conflict between overtime requirements contained in PL 95-390 and Agency regulations would be greatly appreciated.

[Redacted]

STATINTL

7 MAY 1980

INTERNAL USE ONLY

STATINTL

MEMORANDUM FOR: [REDACTED]

General Law Division, Office of General Counsel

STATINTL

FROM: [REDACTED]

Acting Chief, Policies and Services Staff
Position Management & Compensation Division/OPPPMSUBJECT : Applicability of Overtime Requirements Under
P.L. 95-390, Federal Employees Flexible and
Compressed Work Schedules Act of 1978

1. NFAC requested a review of Agency policy [REDACTED] regarding flexible and compressed work schedules (Attachment 1). Attachment 2 is the DDCI's approval of the request to the Office of Personnel Management (OPM) to participate under PL 95-390 so that the Agency could establish a 5/4-9 compressed work schedule desired by NFAC. Attachment 3 is the OPM acknowledgement of our request to them.

STATINTL

2. While preparing a Headquarters Notice to implement our participation under the Act of 1978, a potential conflict was observed between "overtime" requirements contained in PL 95-390 and Agency policy in HR [REDACTED]

STATINTL

3. Specifically, PL 95-390, Title I, Section 101 (2) provides a definition of "overtime hours". Section 103 (a) determines compensation for overtime hours in the case of an employee participating under a flexible schedule program. It is our interpretation that Section 103 (a) (2) provides the Agency with an exception to the definition contained in Section 101 in that, "the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable". It is felt that this requirement is not "applicable" to the Agency because we are not covered by Title 5 U.S.C.

4. A second situation concerning overtime is found in Title II Section 203 (b) which speaks to overtime compensation for employees under Compressed Work schedule (Section 202). Section 203 (b) states, "... hours worked in excess of the compressed schedule shall be overtime hours and shall be paid as provided by whichever statutory provisions referred to in (a) are applicable to the employee". Section 201 (2) defines "overtime hours" as hours in excess of those specified hours which constitutes the compressed schedule. Again, it is felt that the Agency would not have to pay for overtime (as defined in Section 201) because the statutory provisions referred to in Section 203 (a) relate to Title 5 U.S.C. which is not applicable to the Agency.

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5. A rapid reply would be appreciated since a reasonable experimental period (i.e., 10 to 12 months) is required to effectively evaluate the use of alternative work schedules, and an evaluation is required by OPM no later than 1 May 1981. Please call me with your opinion on extension at your earliest convenience.

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Attachments

NATIONAL FOREIGN ASSESSMENT CENTER

WASHINGTON, D. C. 20505

1345
NFAC 1532-80

Director

29 FEB 1980

MEMORANDUM FOR: Director of Personnel Policy,
Planning, and Management

SUBJECT: Review of Policy on Experimental
Flexible and Compressed Work
Schedules

STATINTL

REFERENCE: HN

Some personnel in the National Foreign Assessment Center have expressed interest in a 5-4-9 experimental work schedule available to other government agencies. Reference Headquarters Notice, paragraph 5a, appears to rule out a 5-4-9 experiment by CIA "in general." I would like a review of this policy, because it strikes me that reporting to the Office of Personnel Management on experimental work schedules which is problematical for other Agency components might not be a difficulty for an organization staffed by overt employees. The EXCOM will of course be interested in an NFAC experiment, which if successful, might be adopted by other Agency elements, if not whole directorates.

STATINTL



DD/A Registry
80-0181/3

MAR 1980

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : Harry E. Fitzwater
Director of Personnel Policy,
Planning, and Management

SUBJECT : Flexible and Compressed Work Schedule

80-6809

1. Action Requested: It is requested that you approve a change in Agency policy regarding flexible and compressed work schedules.

2. Background:

a. The Flexible and Compressed Work Schedules Act of 1978 permitted Federal agencies to experiment with alternative work schedules and to waive certain overtime requirements contained in both Title 5 U.S.C. and the Fair Labor Standards Act (FLSA). The Act also made the Office of Personnel Management (OPM) responsible for defining the information needed to evaluate experiments with alternative work schedules and required agencies to report the results of their experiments to OPM.

b. Before OPM published the reporting requirements for experiments with flexible and compressed work schedules, it was decided that a sufficient number of variations of alternative work schedules were possible for experimentation that the Agency would not have to participate under the Act of 1978, thereby avoiding reports to OPM which may have compromised our security. To experiment with alternative work schedules under our own authority and still comply with FLSA, flexible and compressed work schedules had to be established within the framework of the 40-hour workweek.

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c. In October 1980, you approved of the Agency experimenting with flexible and compressed work schedules in [redacted] Many components STATINTL are currently experimenting with a variety of alternative work schedules. Some components have expressed a desire to establish a 5/4-9 compressed work schedule (for example, see attached letter from D/NFAC dated 29 February 1980). This has become popular in a number of other agencies. A 5/4-9 plan cannot be established under current CIA authority since this plan requires a framework of 80-hours in a pay period (that is, 45 hours the first week and 35 hours the second week), and our current policy requires that experiments use a framework of 40-hours in a workweek. Under the FLSA hours worked in excess of 40 in a workweek must be considered overtime. One of the purposes of the Flexible and Compressed Work Schedules Act of 1978 is to allow agencies to experiment with alternative work schedules without incurring overtime costs.

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SUBJECT: Flexible and Compressed Work Schedule

d. As a result of frequent contacts with OPM, Position Management and Compensation Division learned that a draft of the reporting requirements had been prepared. A review of the reporting requirements revealed that they would not compromise our security. Further exploration with OPM also revealed that the Agency could participate under the Act of 1978 and thus be exempt from some of the overtime requirements of the FLSA. This exemption from overtime would allow the Agency to use an 80-hour pay period as a framework for experimenting with alternative work schedules.

3. Recommendation: I recommend that, upon notification to and acceptance by OPM of the Agency's request to participate in the Government-wide experiments being conducted under the Flexible and Compressed Work Schedules Act of 1978, the Agency's framework for experimenting with alternative work schedules be changed from a 40-hour workweek to an 80-hour pay period.

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[Redacted Signature]

Harry E. Fitzgerald

STATINTL

Attachment [Redacted]

APPROVED:

Deputy

Director

DISAPPROVED:

Deputy Director of Central Intelligence

DATE: 4 APR 1980

Distribution:

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